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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/660,185

09/12/2000

John K. Hane

HIGH002/01US

6718

22903

7590

02/25/2005

EXAMINER

VU, NGOC K

COOLEY GODWARD LLP

ATTN: PATENT GROUP

11951 FREEDOM DRIVE, SUITE 1700

ONE FREEDOM SQUARE- RESTON TOWN CENTER

RESTON, VA 20190-5061

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/660,185	<b>Applicant(s)</b> HANE, JOHN K.	
	<b>Examiner</b> Ngoc K. Vu	<b>Art Unit</b> 2611	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57,78 and 109-120 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-57,78 and 109-120 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/23/02, 10/8/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 47 and 48 are objected to because of the following informalities:

With respect to claim 47, it appears that the limitation "a storage device said second data stream" is missing some terms or is inclusive of typographical error. Appropriate correction is required. For examining purpose, the examiner considers limitation of claim 47 as "the receiving device of claim 44 further comprising a storage device".

With respect to claim 48, it appears that the limitation "said first input and said second output" in line 5 is inclusive of typographical error. Appropriate correction is required. For examining purpose, the examiner considers limitation of claim 48 as "said first input and said second input".

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 48 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 48 is indefinite because there is no antecedent basis for the limitation "said first input and said second input device" in line 4. For examining purpose, the examiner considers this limitation as "said first input and second input". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-11, 17-43, 49-57 and 78 are rejected under 35 U.S.C. 102(b) as being anticipated by Nemirofsky et al. (U.S. 5,761,601 A).

Regard claims **1 and 17**, Nemirofsky discloses a method for creating a virtual media channel at an end user comprising:

receiving a first signal including national programming (network-wide video program - see col. 2, lines 49-50; col. 9, lines 20-23);

receiving a second signal including local programming (market specific segment) (see col. 2, lines 51-52; col. 9, lines 20-23);

receiving a network command (control data) originating from somewhere other than the end user (distribution center) (see col. 7, lines 64-65; col. 9, lines 20-23); and

switching between said first and second signals in response to said network command, wherein said switching occurs at the end user (a switching command contained in the control data from the distribution center directs the receiver at the end user to switch between the market-specific segment and the network-wide program) (see col. 9, lines 28-36).

Regarding claim **30**, Nemirofsky discloses a receiving device located at an end user comprising:

a first receiver channel that receives a first signal including a first data stream (network-wide video program is received over a first channel – see col. 2, lines 49-50; col. 9, lines 20-23);

a second receiver channel that receives a second signal including a second data stream (market specific segment is received over an additional channel or a second channel – see col. 2, lines 51-52; col. 9, lines 20-23);

a third receiver channel that receives a third signal including a network command (control data is received over a digital control data channel) originating from somewhere other than the end user (distribution center) (see col. 7, lines 64-65; col. 9, lines 20-23); and

a switch that switches between said first and second receiver channel based on said network command (a switching 54D that switches between the first channel and the second channel based on the control data) (see col. 9, lines 28-36).

Regarding claim 2, Nemirofsky discloses receiving a second network command (e.g., a second control data); and switching back between said first and second signals in response to said second network command (the receiver continues read the control data to switch back to the network-wide program at the end of the current market-specific segment – see col. 9, lines 36-41).

Regarding claims 3, 4, 22 and 34, Nemirofsky discloses receiving the satellite transmitted signals including the network-wide program (see col. 3, lines 1-5; col. 7, lines 63-67).

Regarding claims 5, 8, 23 and 37, Nemirofsky discloses the distribution of the network-wide program and the market-specific segment from the distribution center via cable transmission (see col. 23, lines 19-21; col. 3, lines 1-5).

Regarding claims 6, 7, 24, 25, 26, 35, 36, 38 and 39, Nemirofsky discloses receiving a broadcast/digital broadcast television signal including the network-wide program and the market-specific segment (see col. 11, lines 37-39; col. 3, lines 1-2).

Regarding claim 9, Nemirofsky discloses storing the market-specific segment at the end user (see col. 9, lines 56-59).

Regarding claims **10 and 40**, Nemirofsky discloses switching between the network-wide program and the stored market-specific segment in response to the control data (see col. 10, lines 1-5).

Regarding claim **11**, Nemirofsky discloses storing the control data at the end user (see col. 8, lines 60-66).

Regarding claims **18-21 and 27-29**, Nemirofsky discloses receiving the network-wide program and the market-specific segment (see col. 3, lines 1-5).

Regarding claim **31**, Nemirofsky discloses the receiving device further comprising a storage device (60, 72) (see figure 5).

Regarding claim **32**, Nemirofsky discloses storing the network-wide program (see col. 9, lines 47-59).

Regarding claim **33**, Nemirofsky discloses storing the control data (see col. 8, lines 60-62).

Regarding claim **41**, Nemirofsky discloses that the second and the third channel are the same (see col. 7, lines 63-66).

Regarding claim **42**, Nemirofsky discloses that the first channel comprises a telecommunications channel (see col. 9, lines 20-25).

Regarding claim **43**, Nemirofsky discloses that the network-wide program is received on the telecommunications channel and cached on the storage device (see col. 2, lines 56-58; col. 9, lines 57-59).

Regarding claim **49**, Nemirofsky discloses a method for creating a virtual media channel, comprising:

monitoring a first signal for cue data (control data), wherein said first signal includes national programming (network-wide program);

generating an avail profile using said cue data (profile included location, time of day);  
selecting a delivery commitment (the customized program) that can be satisfied by said avail profile, wherein local program content (the advertising) is associated with said delivery commitment;

transmitting a second signal (market-specific segment) with local program content (the advertising) according to said avail profile; and

causing a receiving device located at reception by an end user to switch between the first signal and said second signal (causing receiving device 54 located at the end user location to switch between the network-wide program and the market-specific segment) (See col. 9, lines 47-52; col. 11, lines 47-55 and 60-63; col. 3, lines 25-35 and 53-57).

Regarding claim **50**, Nemirofsky discloses causing a receiving device 54 switches between the network-wide program and the market-specific segment comprises a switch command (see col. 2, lines 65-67; col. 11, lines 47-52).

Regarding claims **51-55**, Nemirofsky discloses broadcasting a switch command over satellite/cable transmission (col. 9, lines 20-25 and 47-50; col. 3, lines 25-30; col. 23, lines 19-21).

Regarding claims **56 and 57**, Nemirofsky discloses transmitting the second signal with advertising/data delivery content (see col. 3, lines 53-57).

Regarding claim **78**, Nemirofsky discloses a method for providing a local program stream to an end user receiving a national program stream:

monitoring said national program stream (network-wide program channel) for indicia (control data) regarding a local program segment (market-specific segment);

transmitting said local program stream (market-specific segment channel) during said local program segment (market-specific segment);

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causing an end user receiving device (54) to switch between said national program stream and said local program stream at the start of said local program segment (e.g., switching from network-wide program channel to market-specific segment channel) (see col. 3, lines 25-34; col. 9, lines 20-46; col. 11, lines 47-48).

Regarding claims **112, 116 and 120**, Nemirofsky discloses receiving control data via third channel via a telecommunications network (see col. 9, lines 20-25).

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 44-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Stinebruner (U.S. 6,133,910 A).

Regarding claim **44**, Stinebruner discloses a receiving device comprising:

a first receiver (tuner 1 – see figure 1) that receives a first data stream from a direct broadcast satellite system;

a second receiver (tuner 2 – see figure 1) that receives a second data stream from a broadcast television system; and

a switch (30 – see figure 1) connected to said first receiver and said second receiver and responsive to a network command (a selector 30 operates as multiplex to output one of the video signals from tuners 22 in response to a command from controller 12) (see col. 5, lines 5-13; col. 6, lines 49-54 and figure 1).



Regarding claims **45 and 46**, Stinebruner discloses that data stream includes local programming/data files (see col. 11, lines 50-59; col. 12, lines 6-26).

Regarding claim **47**, Stinebruner discloses that the receiving device further comprising a storage 16 (see figure 1).

Regarding claim **48**, Stinebruner discloses a switch (30) comprising:  
a first input (within 30) connected to a first receiver (tuner 1) (see figure 1);  
a second input (within 30) connected to a second receiver (tuner 2) (see figure 1); and  
an output (within 30) for providing one of the first input and said second input to an output device (36, 38), wherein said switch (30) switches between said first input and said second input in response to a remotely originated command (a selector 30 operates as multiplex to output one of the video signals from tuners 22 in response to a command from user input 14 via controller 12) (see col. 5, lines 5-13; col. 6, lines 49-54 and figure 1).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 109-111, 113-115 and 117-120 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky et al. (U.S. 5,761,601 A).

Claims **109-111, 113-115 and 117-120**, Nemirofsky discloses the receiving device includes modem 50 (see figure 5). Nemirofsky does not teach a web-based user interface, and/or an interface to a PSTN, Internet. Official Notice is taken that it is well known in the art that a user device includes a web-based user interface, and/or an interface for linking to Internet, PSTN. Therefore, it would have been obvious to one having ordinary skill in the art at

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the time the invention was made to modify the system of Nemirofsky by including a web-based user interface, and/or an interface for linking to Internet, PSTN, in order to provide connection to network for obtaining interactive service.

10. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nemirofsky et al. (U.S. 5,761,601 A) in view of Huber (US. 5,659,351 A).

With respect to claims 12-14, Nemirofsky discloses switching between the network-wide program and the market-specific segment based on control data. Nemirofsky does not explicitly disclose the control data including a time. However, Huber teaches that each primary video channel could have a control channel associated with it that would tell the video switch what channel was required for local programming, what time to switch, and how much time to allow before returning to the primary source (see col. 19, lines 62-67). That is, the control channel includes time information to tell the switch switches programming at the appropriate time. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Nemirofsky by providing the control channel including time information as taught by Huber in order to switch programming at the appropriate time.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Perine et al. (US 4,814,883 A) discloses multiple input/output video switch for commercial insertion system.

Watson (US 4,625,235 A) discloses a remote control switch of television sources.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoc K. Vu whose telephone number is 703-306-5976. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on 703-305-4755. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Ngoc K. Vu', with a long horizontal flourish extending to the right.

Ngoc K. Vu  
Examiner  
Art Unit 2611

February 18, 2005